

MONTANA LEGISLATIVE HISTORY

Chapter 564 1991

Bill H 631 S _____ Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) Feb 13 ☒ C

Feb 15 ☒ C

Feb 18 ☒ C

_____ ☐ C

Date Out Feb 19 ☒ C

S. Committee on Judiciary

Hearing Date(s) Mar 22 ☒ C

Mar 23 ☒ C

_____ ☐ C

_____ ☐ C

Mar 23 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

4/17 TRANSMITTED TO GOVERNOR
 4/22 SIGNED BY GOVERNOR
 CHAPTER NUMBER 533

EFFECTIVE DATE: 10/01/91

HB 630 INTRODUCED BY MCCULLOCH, ET AL.

REPLENISH DISASTER AND EMERGENCY FUND TO
 LEVEL EQUAL TO ANY RECOVERED FUNDS

2/06	INTRODUCED		
2/06	REFERRED TO NATURAL RESOURCES		
2/06	FISCAL NOTE REQUESTED		
2/06	FIRST READING		
2/11	FISCAL NOTE RECEIVED		
2/12	FISCAL NOTE PRINTED		
2/15	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED		
2/22	PLACED ON CONSENT CALENDAR		
2/27	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
2/27	REFERRED TO FINANCE & CLAIMS		
3/04	FIRST READING		
3/12	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/15	2ND READING CONCURRED	48	0
3/16	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/23	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 256		

EFFECTIVE DATE: 10/01/91

✓ HB 631 INTRODUCED BY MCCULLOCH, ET AL.

MINIMUM SENTENCE RESTRICTIONS FOR SEXUAL
 OFFENSES INVOLVING PERSON UNDER 16

2/06	INTRODUCED		
2/06	REFERRED TO JUDICIARY		
2/06	FISCAL NOTE REQUESTED		
2/06	FIRST READING		
2/12	FISCAL NOTE RECEIVED		
2/12	FISCAL NOTE PRINTED		
2/13	HEARING		
2/15	TABLED IN COMMITTEE		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	92	6
2/26	3RD READING PASSED	95	4
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO JUDICIARY		
3/22	HEARING		
3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	49	0
3/28	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	90	7
4/10	3RD READING AMENDMENTS CONCURRED	88	10
4/18	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 564		

EFFECTIVE DATE: 10/01/91

HOUSE BILL NO. 631

INTRODUCED BY MCCULLOCH, D. BROWN, TOOLE, WHALEN, GOULD,
KELLER, SCHYE, SQUIRES, RUSSELL, BECKER, HALLIGAN, STRIZICH,
LEE, DARKO, WYATT, MADISON, YELLOWTAIL, KEATING, KNOX,
BENEDICT, HOFFMAN, R. DEBRUYCKER, GILBERT, SCOTT, THOMAS

IN THE HOUSE

FEBRUARY 6, 1991

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 19, 1991

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1991

PRINTING REPORT.

FEBRUARY 23, 1991

SECOND READING, DO PASS.

FEBRUARY 25, 1991

ENGROSSING REPORT.

FEBRUARY 26, 1991

THIRD READING, PASSED.
AYES, 95; NOES, 4.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 27, 1991

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

MARCH 23, 1991

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 27, 1991

SECOND READING, CONCURRED IN.

MARCH 28, 1991

THIRD READING, CONCURRED IN.
AYES, 48; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 9, 1991

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS

CONCURRED IN.

APRIL 10, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. *631*

INTRODUCED BY *McGuire, Dave, Brian, Whalen*

Free, Keller, Ridge, Grace, Turner, Becker, LaRocca, Wapett, Madigan, Johnson, Ert, Knox
A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE MINIMUM
SENTENCE FOR SEXUAL ASSAULT INVOLVING A PERSON UNDER 16

YEARS OF AGE; PROVIDING THAT A MANDATORY SENTENCE OF
IMPRISONMENT FOR SEXUAL ASSAULT INVOLVING A PERSON UNDER 16
YEARS OF AGE MAY NOT BE DEFERRED OR SUSPENDED; AND AMENDING
SECTIONS 45-5-502 AND 46-18-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-502, MCA, is amended to read:

"45-5-502. Sexual assault. (1) A person who knowingly
subjects another not his spouse to any sexual contact
without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined
not to exceed \$500 or be imprisoned in the county jail for
any term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the
offender is 3 or more years older than the victim or if the
offender inflicts bodily injury upon anyone in the course of
committing sexual assault, he shall be imprisoned in the
state prison for any term not to exceed less than 2 years or
more than 20 years and may be fined not more than \$50,000.

(4) An act "in the course of committing sexual assault"

shall include an attempt to commit the offense or flight
after the attempt or commission.

(5) Consent is ineffective under this section if the
victim is less than 14 years old and the offender is 3 or
more years older than the victim."

Section 2. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever
a person has been found guilty of an offense upon a verdict
or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences
for driving under the influence of alcohol or drugs, for a
period, except as otherwise provided, not exceeding 1 year
for any misdemeanor or for a period not exceeding 3 years
for any felony. The sentencing judge may impose upon the
defendant any reasonable restrictions or conditions during
the period of the deferred imposition. Reasonable
restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) restitution;
- (v) payment of the costs of confinement;
- (vi) payment of a fine as provided in 46-18-231;
- (vii) payment of costs as provided in 46-18-232 and
46-18-233;

1 (viii) payment of costs of court appointed counsel as
 2 provided in 46-8-113;
 3 (ix) community service;
 4 (x) any other reasonable conditions considered
 5 necessary for rehabilitation or for the protection of
 6 society; or
 7 (xi) any combination of the above.
 8 (b) suspend execution of sentence up to the maximum
 9 sentence allowed for each particular offense. The sentencing
 10 judge may impose on the defendant any reasonable
 11 restrictions or conditions during the period of suspended
 12 sentence. Reasonable restrictions or conditions may include
 13 any of those listed in subsections (1)(a)(i) through
 14 (1)(a)(xi).
 15 (c) impose a fine as provided by law for the offense;
 16 (d) require payment of costs as provided in 46-18-232
 17 or payment of costs of court-appointed counsel as provided
 18 in 46-8-113;
 19 (e) commit the defendant to a correctional institution,
 20 with or without a fine as provided by law for the offense;
 21 (f) impose any combination of subsections (1)(b)
 22 through (1)(e).
 23 (2) If any financial obligation is imposed as a
 24 condition under subsection (1)(a), sentence may be deferred
 25 for a period not exceeding 2 years for any misdemeanor or

1 for a period not exceeding 6 years for any felony,
 2 regardless of whether any other conditions are imposed.
 3 (3) If any restrictions or conditions imposed under
 4 subsection (1)(a) or (1)(b) are violated, the court shall
 5 consider any elapsed time and either expressly allow part or
 6 all of it as a credit against the sentence or reject all or
 7 part as a credit and state its reasons in the order. Credit,
 8 however, must be allowed for jail time already served.
 9 (4) Except as provided in 46-18-222, the imposition or
 10 execution of the first 2 years of a sentence of imprisonment
 11 imposed under the following sections may not be deferred or
 12 suspended: 45-5-103, 45-5-202(3) relating to aggravated
 13 assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
 14 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d),
 15 45-9-102(3), and 45-9-103(2).
 16 (5) Except as provided in 46-18-222, the imposition or
 17 execution of the first 10 years of a sentence of
 18 imprisonment imposed under 45-5-102 may not be deferred or
 19 suspended.
 20 (6) Except as provided in 46-18-222, imposition of
 21 sentence in a felony case may not be deferred in the case of
 22 a defendant who has been convicted of a felony on a prior
 23 occasion, whether or not the sentence was imposed,
 24 imposition of the sentence was deferred, or execution of the
 25 sentence was suspended.

1 (7) If the victim was less than 16 years old, the
2 imposition or execution of the first 30 days of a sentence
3 of imprisonment imposed under 45-5-502{3}, 45-5-503,
4 45-5-504, 45-5-505, or 45-5-507 may not be deferred or
5 suspended. Section 46-18-222 does not apply to the first 30
6 days of such imprisonment.

7 (8) In imposing a sentence on a defendant convicted of
8 a sexual offense as defined in 46-23-502, the court may not
9 waive the registration requirement provided in 46-18-254,
10 46-18-255, and Title 46, chapter 23, part 5.

11 (9) A person convicted of a sexual offense, as defined
12 in 46-23-502, and sentenced to imprisonment in the state
13 prison shall enroll in the educational phase of the prison's
14 sexual offender program."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0631, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "An act increasing the minimum sentence for sexual assault involving a person under 16 years of age; providing that a mandatory sentence of imprisonment for sexual assault involving a person under 16 years of age may not be deferred or suspended."

ASSUMPTIONS:

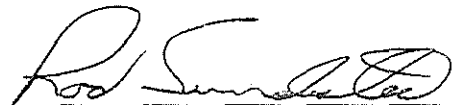
1. This bill imposes a mandatory minimum prison term for conviction of sexual assault involving a person under 16 years of age.
2. Assume 40% of all sexual assault convictions involve victims less than 16 years of age (Montana Uniform Crime Reporting System). This would result in approximately 24 additional prison admissions per year.
3. Assume the admissions would serve an average term that is 21% greater than the average inmate; therefore, the admissions would equate approximately to an average of 25 admissions per year.
4. The bill is effective October 1, 1991.

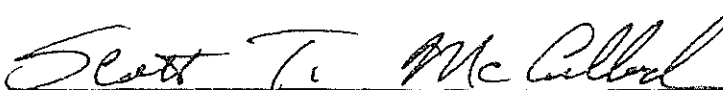
FISCAL IMPACT:Expenditures:

	FY '92			FY '93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Operating Costs	0	33,945	33,945	0	50,644	50,644
<u>Funding:</u>						
General Fund	0	33,945	33,945	0	50,644	50,644

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Costs in future years would be approximately \$50,644 plus inflation.

 2-11-91
 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 2-12-91
 SCOTT MCCULLOCH, PRIMARY SPONSOR DATE

Fiscal Note for HB0631, as introduced

HB 631

doesn't know how many prosecutions have been filed under this section. I know that what Holly Franz said is true that a person my look at this section as a problem with the constitution. It does amount to deny equal protection.

REP. MEASURE asked John Conner why is there a need to decriminalize sex acts between consenting adults in a homosexual or lesbian relationship and increasing penalty for sex acts between adults? Mr. Conner stated he was not involved in the drafting but in the prosecution stand point charges of incest most often arise where there has been a step-father having had some sort of sex offense against his step-daughter. In those instances, they are often charged under the sexual contact language because of the fact it is difficult to prove penetration when they only have the testimony of the child. Holly Franz stated the purpose of our amendment to the incest statute was to allow flexibility, particularly in keeping with rape situations, so the subject of celestial sex is not particularly foremost in our minds. I am not ready to say that I would support decriminalizing incest.

Closing by Sponsor:

REP. BROOKE thanked everyone for their testimony in a sometimes sensitive area. I encourage you support of this bill.

HEARING ON HB 631
SENTENCE RESTRICTIONS FOR SEXUAL OFFENSES

Presentation and Opening Statement by Sponsor:

REP. MCCULLOCH, SD 96, stated this is a bill that provides mandatory sentence of two years in prison for those offenders convicted of sexual assault against younger children. In my mind there is nothing worse than when this is done to innocent, defenseless children. I have brought this bill to you today because the present system of deterrents is moderate and as a response to the increase of sexual assault done to our children by adults. Adult offenders usually get the equivalent to no more than a slap on the hands. It is obvious that this crime is considered serious as current law is a maximum of 20 years and a fine of \$50,000. Yet, the sentencing is always suspended and the offenders are required in a treatment that last no more than 30 days. After the 30 day program is completed, usually these defenders are deemed cured and released back onto the streets where almost 40% become repeat offenders. Thirty days is not considered a very long time when the victims live with this for the rest of their lives.

Proponents' Testimony: none

Opponents' Testimony: none

Informational Testimony:

John Connor, Montana County Attorney's Association, stated he told Rep. McCulloch that I would be available this morning if there were any questions the committee had on this because I have had to provide him with some suggestions as to how to approach the problem that he considered very serious and this bill resulted from that discussion. I didn't draft the bill itself but I am responsible for providing the direction the draft took and I would be happy to give you a prosecutors perspective on this bill.

Dan Russell, Administrator - Divisions of Corrections, stated this bill has a greater impact in any bill that has become before you this session. With a mandatory prison sentence with conviction of sexual assault involving a person under 16 years of age. An average of 58 individuals were admitted each year for probation for this crime in the past 5 years. About 42% sexual assault involved victims age less than 16. You can assume you have 58 to 75 people on probation and will result in at least in 24 to 30 prison admissions per year. Those people can go to probation today and a mandatory minimum of two years and they will go to prison. It has a major impact on the prison populations.

Questions From Committee Members:

REP. MEASURE asked John Conner what would be the mandatory sentencing in a program for a treatment center? Mr. Conner stated that is true that some of these offenses are dealt with by treatment and if sent to prison it would only be available through the sexual offender treatment program in prison. I think Rep. McCulloch wanted to deal with those situations where people weren't getting prison sentences for committing sexual assaults that were very serious.

Closing by Sponsor:

REP. MCCOULOCH stated the situation that is created now is that the offenders when comes time for sentencing their whole sentence is suspended and there is not type of deterrent use. They spend 30 days in a treatment program and then releases back onto the streets and there is somewhat of a high repeat offender percentage.

I teach 6th grade and have students in my class who have been sexually assaulted by adults. These children are hurt and scared for many years and sometimes forever. Mandatory sentencing not only works as a deterrent, but sends a message to the victim and their families that these crimes are serious offenses. Society is now going to admit that these crimes do exist and we recognize the right of protection. I ask this committee to send the

message that we will not tolerate the abuse and assault on the children of our state and they will not be forgotten. If this legislative body will not protect them, who will? I urge do pass of this bill.

HEARING ON HB 421

CLARIFY CERTIFICATION AND TRAINING OF LIMITED JURISDICTION JUDGES

Presentation and Opening Statement by Sponsor:

REP. HOFFMAN, HOUSE DISTRICT 74, stated HB 421 gives clarification requested by the Supreme Court to clarify existing law. Primarily what it does is clarify certain requirements of lower court judges. Judges in courts with limited jurisdiction, both JP courts and Municipal courts. It clarifies the qualifications of those judges and also requires that the Supreme Court be notified of an election or appointing of a judge to a court of limited jurisdiction. The bill cross references clarification with the qualification requirements between the district court judge statutes and the justice of the peace statutes in hopes of the courts appoint a judge that is properly trained. There is no fiscal impact to this bill.

Proponents' Testimony:

David Hull, Helena City Attorney, stated the bill makes clarifications in current law. I would point out on page two, section four, it talks about notifying the commission of the person appointed. There is some additional language on page 6 and 7 regarding certification of the election of a judge to the state courts. There reason for that is that we found judges were getting elected or appointed and we didn't know about it and didn't have them on our list and were unable to make sure they meant certification requirements. The other language changes in the body of the bill, clarifies the rules that the Supreme Court has already put in affect and given us guide lines to insure the certification and training of the courts of limited jurisdiction. I would ask for your support of this bill.

Pat Bradly, Montana Magistrates Association, stated the MMA supports HB 421. The President of the Magistrates Association is also a member of the commission on courts of limited jurisdiction, was hoping to be here to testify. In his absence, he asked me to tell you that the commission has requested that the code commissioner review the statutes in this bill for clarification. We ask that you support this bill.

Opponents' Testimony:none

Questions From Committee Members:

REP. MEASURE asked Mr. Hull, as far as the mandatory training requirements, where did they come from, how thoroughly did you

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO. HB#631

DATE 2-13-91

SPONSOR(S) Rep. Maculloch

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Wotie Welker	MATT	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

22, 23 and amending the pertinent portion of the title and inserting the language given to committee. EXHIBIT 1 Motion passed unanimously.

Discussion: John MacMaster stated the amendment will say, when there is a violation the commission can order that the penalty be paid to the community, the state or any other party that violated the commission order. If you look at page 2, lines 1,2,3, talks about common carriers violating any provision of this chapter or doing any other act here prohibited or refusing to conform law and order. Mr. MacMaster said he would like to word the amendment so that it says that the commission can order the money paid to the community, state or other party protected by the law or commission order that was violated.

Motion/Vote: REP. WHALEN moved to amend HB 608 explained by John MacMaster and have an immediate effective date. Motion passed unanimously.

Motion/Vote: REP. WHALEN MOVED HB 608 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 631

Motion: REP. MESSMORE MOVED HB 631 DO PASS.

Discussion: REP. MEASURE stated he is concerned about the mandatory sentence of this area. Primarily because the most effective way of dealing with this problem, to prevent repeat offenses, is immediate treatment. A mandatory sentence would prevent that treatment. Rep. Measure stated he opposed the bill.

REP. TOOLE stated this bill is forcing a court to send a person to prison for two years. Current law says the court can send a person to prison as an option. Rep. Toole stated that he did not see the necessity of this particular bill.

Motion/Vote: REP. TOOLE MOVED HB 631 BE TABLED. Motion passed 15 to 5 with Rep's: Gould, Boharski, Strizich, Whalen and Clark voting no.

EXECUTIVE ACTION ON HB 439

Motion: REP. RICE MOVED HB 439 DO PASS.

Discussion: REP. RICE asked John MacMaster if SB 51 has a provision for notifying the defendant of this? John MacMaster stated that it doesn't. Right now the law in Title 46 has two different sections. Each of which states certain things you must notify the defendant about. One of them states what you have to

REP. MEASURE stated he agreed. "But, you know as well as I do, what that informative effective warning of the risks is that they are going to have some type up a logo and post it up in their park." He felt that they will also have them sign a little waiver and would end up a mess. "Those people don't deserve a waiver of liability."

REP. WHALEN stated that is precisely what was wanted and the sub-committee told them it wouldn't give that to them. Because depending on the specific circumstances of each specific situation, that posting, may or may not be an effective warning that a reasonable person is going to understand. The sub-committee agreed that the facts are different in each particular case.

Vote: Motion passed 18 to 2 with Rep's: Measure and Russell voting no.

EXECUTIVE ACTION ON HB 631

Motion: REP. TOOLE MOVED HB 631 BE RECONSIDERED. Motion carried unanimously.

Motion: REP. TOOLE MOVED HB 631 DO PASS.

Motion: REP. TOOLE moved to amend HB 631. EXHIBIT 9

Discussion: REP. TOOLE stated this amendment adds a new section to the bill and changes the law that is not a part of this bill. It is a sentencing statute that will have an additional provision.

Vote: Motion carried unanimously.

Motion/Vote: REP. TOOLE MOVED HB 631 DO PASS AS AMENDED. Motion carried 16 to 4 with Rep's: Brown, Rice, Russell, and Measure voting no.

EXECUTIVE ACTION ON 284

Motion: REP. RICE MOVED HB 284 BE RECONSIDERED. Motion carried. EXHIBIT 10

Motion: REP. JOHNSON MOVED HB 284 DO PASS.

Motion/Vote: REP. WHALEN moved to amend HB 284. (Refer to Standing Committee Report) Motion carried 18 to 2 with Rep's: Darko and Measure voting no.

Motion/Vote: REP. RICE moved to amend HB 284. EXHIBIT 11.
Motion carried 14 to 4. EXHIBIT 12

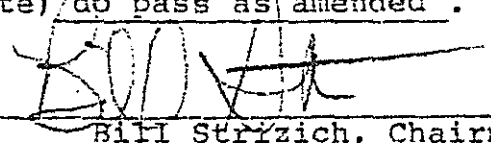
Motion/Vote: REP. RICE MOVED HB 284 DO PASS AS AMENDED. Motion carried 13 to 7 with Rep's: Whalen, Wyatt, Becker, Russell,

HOUSE STANDING COMMITTEE REPORT

February 19, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 631 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strzich, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "PROVIDING"

Insert: ", WITH AN EXCEPTION,"

2. Title, line 9.

Strike: "AND"

Insert: ", "

Following: "46-18-201,"

Insert: "AND 46-18-222,"

3. Page 5.

Following: line 14

Insert:

"Section 3. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (4), (5), and (6) of 46-18-201, 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another,

and the defendant's participation was relatively minor; ~~or~~
(5) where applicable, no serious bodily injury was
inflicted on the victim unless a weapon was used in the
commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the
court determines that treatment of the defendant at the local
level affords a better opportunity for rehabilitation of the
defendant and for the ultimate protection of society, in which
case the court shall include in its judgment a statement of the
reasons for its determination."

EXHIBIT 9
DATE 2-18-91
HB 631

Amendment to House Bill 631:

Page 1, line 9.
Following: "45-5-502"
Strike: "AND"
Insert: ", "
Following : "46-18-201,"
Insert: "AND 46-18-222,"

Page 5,
Following: line 14
Strike: "END"
Insert: "Section 3. Section 46-18-222, MCA, is amended
to read:

* * *

(6) If the offense was one committed under title 45, chapter 5, part 5, and the court determines that treatment of the offender on the local level affords a better opportunity for rehabilitation of the defendant and the ultimate protection of society. In such case, the court shall include in the judgment a statement of the reasons for its conclusion."

HEARING ON HOUSE BILL 631Presentation and Opening Statement by Sponsor:

Representative Scott McCulloch, District 96, said HB 631 provides for a mandatory sentence of two years for sexual assault of young children. He told the Committee he believes the present system is not working, and that punishment is a slap on the hand. Representative McCulloch stated current law provides for a maximum sentence of 20 years, plus a fine, but most sentences are for 30 days of treatment. He reported that almost 40 percent become repeat offenders.

Representative McCulloch commented that if sentences were more appropriate, he would not have introduced this bill. He explained that page 6, line 23 continues the flexibility of judges, but requires a written statement as to why a sentence is not imposed. Representative McCulloch advised the Committee that he believes in flexibility of sentencing, imputing prison sentences, and proper treatment for offenders. He said the fiscal note shows a small effect, and urged the Committee to pass the bill.

Proponents' Testimony:

Diane Sands, Executive Director, Montana Women's Lobby, said treatment programs are essential, but are not nearly as available as they need to be. She said the bill sends the intent to reduce child abuse.

Paul Johnson, representing the Montana County Attorneys Association, said John Connor could not be present because of a hearing in Deer Lodge this date. He stated that mandatory minimum sentencing can do some good in cases of sexual assault. Mr. Johnson explained that developing evidence and testimony concerning penetration is extremely difficult with very young children, and that often adequate testimony can't be developed. He said the bill provides an alternative charge of sexual assault, giving the prosecution the tool to go after these kinds of perpetrators. He urged the Committee to pass the bill.

Representative Thomas Lee, District 49, said the Committee should consider the bill "on justice rendered in relation to the offense", and that he supported this legislation.

Opponents' Testimony:

There were no opponents of HB 631.

Questions From Committee Members:

Senator Towe commented that there is some relief in Section 3, but he was not sure how exception (5) applies. He asked how this would apply in a normal situation (page 6, lines 20-22), and if, by adding (6), the bill adds another exception regarding why exception

should occur. Representative McCulloch replied, "I think so. Yes."

Senator Towe referred to page 1 of the bill, and said an 18-year-old had better not have sex with a 15-year-old. Representative McCulloch replied that is why (6) was added to Section 3.

Senator Towe asked if (6) was sufficient to cover such incidents. Representative McCulloch replied it is.

Closing by Sponsor:

Representative McCulloch told the Committee he teaches sixth grade. He said children are hurt and scarred for many years as a result of sexual assault. He asked the Committee to send a message that the State will not tolerate sexual abuse of children.

HEARING ON HOUSE BILL 747

Presentation and Opening Statement by Sponsor:

Representative Thomas Lee, District 49, said HB 747 is a companion bill to Representative Bradley's Community Corrections Act bill. He explained that the bill establishes a policy for alternatives to sentencing for non-violent offenders, and provides alternative sentencing procedures to judges.

Representative Lee stated that page 8 requires judges to consider sentencing people to a community-based treatment program. He explained that the new sections lay out the criteria of consideration.

Proponents' Testimony:

Harley Warner, Montana Association of Churches, said he supports the sentencing system, and agrees that the majority of offenders can be dealt with in communities.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Representative Lee made no closing comments.

is to give first right to descendants to control. Karen Atkinson commented that the bill does apply to all unmarked graves, and that the ability to put names to graves is very slim.

Senator Rye said he objected to the amendment, and that he believes the bill is good as it is. He said "bonafide" leaves an opening for trouble.

The motion made by Senator Towe failed 4-7, in a roll call vote (attached). Senator Halligan was not present and did not leave a vote.

Recommendation and Vote:

Senator Svrcek made a motion that HB 131 BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 915

Motion:

Senator Towe made a motion that HB 915 BE CONCURRED IN with the proviso to come back if the Attorney General has concerns.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously. Senator Pinsoneault will carry HB 915.

EXECUTIVE ACTION ON HOUSE BILL 631

Motion:

Discussion:

Senator Towe said that if Sections 1 and 3 are read together, an 18-year-old having sex with a 14-year-old would be sentenced to two years, but could have his or her sentence deferred upon the findings of a judge that he or she be rehabilitated under local control.

Chairman Pinsoneault advised the Committee that they needed to have John Connor, Montana County Attorneys, present to provide more information.

Senator Crippen stated he was against taking discretion from judges. He said line 23 on page 6 provides an out, and asked what would happen if there was no ability to rehabilitate someone at the local level. He asked where the judge would be then. Senator Towe replied he believes the judge can suspend the sentence, and send the offender home (page 5, line 20).

Senator Crippen asked Representative McCulloch if that was his intent. Representative McCulloch replied that John Connor helped him to draft the bill, and that he assumed some type of program would be available at the county level. Representative McCulloch said the example cited by Senator Towe could happen, but would be rare. He said the bill is designed for the sexual abuse of younger children.

Amendments, Discussion, and Votes:

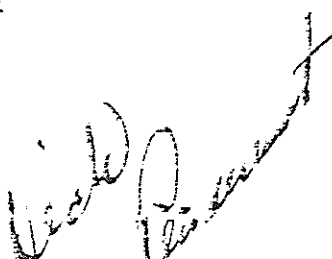
There were none.

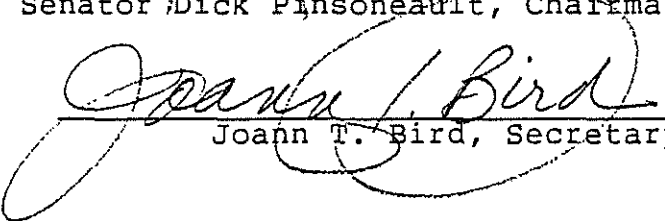
Recommendation and Vote:

Further action on the bill was delayed until March 23, 1991.

ADJOURNMENT

Adjournment At: 11:55 a.m.



Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 23, 1991, at 7:55 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

EXECUTIVE ACTION ON HOUSE BILL 631

Motion:

Discussion:

John Connor, Department of Justice and Montana County Attorneys, told the Committee he only helped to draft HB 631 at the request of Representative McCulloch, and that the Department is not involved in this bill. He said he did provide the amendment in the House on page 6, subsection (6).

Amendments, Discussion, and Votes:

Senator Towe made a motion to amend page 6, lines 24-25, by striking "at the local level", and inserting "in a local community".

Senator Svrcek commented that this was discussed as "in a community-based program" yesterday. He asked what the difference is between "local community" and "local level".

Senator Towe's motion to amend HB 631 carried unanimously.

Senator Crippen asked if a judge could still defer or suspend a sentence. John Connor replied he or she could.

Recommendation and Vote:

Senator Doherty made a motion that HB 631 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 110

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe made a motion to approve the coordination instructions (with SB 31). The motion carried unanimously.

Recommendation and Vote:

Senator Mazurek made a motion that HB 110 BE CONCURRED IN AS AMENDED.

Senator Crippen asked how SB 31 is related to HB 110. Senator Towe replied HB 110 refers to intrastate , and provides for a testing procedure in 49C of Part 40. He said HB 110 does most of what SB 31 would do.

The motion made by Senator Mazurek carried unanimously. Senator Towe was asked to carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 847

Motion:

There was no motion on HB 847.

Discussion:

Valencia Lane reported that Senator Towe asked her to do a considerable amount of work on the bill. She requested that the Committee pass it for the day, and Chairman Pinsoneault agreed.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 23, 1991

MR. PRESIDENT:

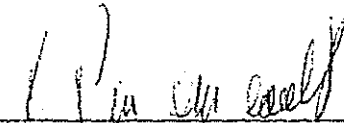
We, your committee on Judiciary having had under consideration House Bill No. 631 (third reading copy -- blue), respectfully report that House Bill No. 631 be amended and as so amended be concurred in:

1. Page 6, lines 24 and 25.

Following: "defendant" on line 24

Strike: remainder of line 24 through "level" on line 25

Insert: "in a local community"

Signed: 

Richard Pinsoneault, Chairman

LB 3/23/91
Amd. Coord.

EL 3/23 12:00
Sec. of Senate